

ESTTA Tracking number: **ESTTA264130**

Filing date: **02/02/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048480
Party	Defendant AL-FAKHER FOR TABACCO TRADING & AGENCIES CO. LTD.
Correspondence Address	F. Freddy Sayegh Sayegh & Associates, PLC 5895 Washington Boulevard Culver City, CA 90232 UNITED STATES srabin@johnsonpham.com
Submission	Other Motions/Papers
Filer's Name	Susan Rabin
Filer's e-mail	srabin@johnsonpham.com
Signature	/susan rabin/
Date	02/02/2009
Attachments	Response to TTAB Suppl Order re Status of Civ Ac.pdf (5 pages)(179071 bytes) DECLARATION OF SUSAN RABIN.pdf (1 page)(62765 bytes) Resp ex, A.pdf (11 pages)(334637 bytes) Resp ex,B.pdf (16 pages)(530575 bytes) Resp ex, C.pdf (32 pages)(830013 bytes) Resp ex,D.pdf (3 pages)(60635 bytes)

Petitioner's Reply ("Reply") to Respondent's Opposition to Motion for Sanctions, illogically contends that the Civil Action has "no bearing on the Petition" [Reply, p. 3]. The facts and the evidence clearly support that the Civil Action and the Cancellation Action are related, as to parties, subject matter, facts, and counsel.

II. THERE IS SUBSTANTIAL BASIS TO STAY THE BOARD PROCEEDING.

There is no reasonable basis to support duplicative infringement actions. The Civil Action raises the identical issues as the Cancellation Action, and, significantly, broader issues not addressed in the Board proceeding. Resolution of this range of issues will absolutely have an effect on the Cancellation Action. It has long been recognized that a single tribunal for a controversy is beneficial to all parties and to the efficient administration of justice. Staying of the Cancellation Action will prevent duplicative proceedings, prevent vexatious and harassing litigation, and avoid inconsistent rulings.

It may be considered that Petitioner brought the Cancellation Action as a way to obtain discovery from Respondent outside the litigation process, in order to obtain information it could use against Respondent or Sierra in an infringement lawsuit. The court in one Ninth Circuit case found instructive that the parties competed in an highly competitive market and that a delay in the federal litigation caused by the TTAB proceedings would create undue risk for the federal suit plaintiff. *Chesebrough-Pond's, Inc. v. Faberge, Inc.*, 666 F.2d 393, 397 (9th Cir. 1982). Petitioner very likely anticipated Respondent would seek an infringement action against Petitioner's infringing actions. As in the cited case, Petitioner appears to maintain the Cancellation Action as a means of taking the offense, claiming ownership of the Mark to dispel claims by Respondent of Petitioner's infringements. Petitioner cites no cases to support that the Board is the proper forum for a defense of its non-infringement.

III. THE PARTIES TO THE CIVIL ACTION AND THE CANCELLATION ACTION ARE IDENTICAL AND OWN OR CONTROL THE RIGHTS IN AND TO THE MARK.

Petitioner argues disingenuously in its Reply that Respondent is not a proper party to the Cancellation Action and that its position is merely "an alleged exclusive licensee." [Reply, p. 3.]

Respondent's earlier responses filed with the Board in the Cancellation Action establish that Respondent, Sierra Network, Inc. is the exclusive licensee in the United States tobacco under the "Al-Fakher" Mark. Over the years that the Mark has been in commerce, Petitioner has entered into distribution agreements with Respondent and with Respondent's principal. In these executed contracts, Petitioner acknowledges the agreements' recitals: "Whereas SIERRA NETWORK, Inc. is the Exclusive Distributor in the United States of America of the well-known high quality processed honeyed and flavoured tobacco of AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO., LTD." [Attached hereto is a true and correct copy of the Sole Distributor Agreement for Illinois dated August 23, 2006 and the Sole Distributor Agreement for Michigan dated August 23, 2006 as Exhibit "A."]

Petitioner erroneously contends that the Civil Action has "no bearing on the Petition" [Reply, p. 3]. And, contrary to the facts and the evidence, Petitioner claims that the Civil Action and the Cancellation Action are unrelated save for identical counsel [Reply, p. 3]. Sierra Network, Inc. ("Sierra") has full authority from Respondent to protect and enforce the subject Mark and bring any action pursuant to an Exclusive Distribution Agreement. A true and correct copy of the Exclusive Distribution Agreement between Respondent and Sierra is attached hereto as Exhibit "B".

Thus, Petitioner challenges the very same Mark and the rights of the very same party as in the Civil Action. Naming Respondent in its Petition papers rather than Sierra appears to be a strategy to disguise the clear and supported facts. If Petitioner genuinely disputes Sierra's standing and authority, such a challenge would appear in its Answer to the Second Amended Complaint in the Civil Action. Instead, regarding the claim of Sierra's position and authority, Petitioner responds, "Defendants lack information sufficient to form a belief as to the truth of the allegations of Paragraph 12 and therefore leave Plaintiff to its proof." A true and correct copy of Petitioner's Answer as Defendant in the Civil Action is attached hereto as Exhibit "C."

Petitioner cites only one case, Iowa Health Care System v. Trinity Health Corp., 177 F.Supp.2d 897, 911 (N.D. Iowa 2001) in arguing Sierra may not act with or represent Respondent in the Cancellation Action. Iowa Health Care System, however, involved multiple

defendants with questions as to the true defendant, and the court recommended a summary judgment proceeding to explore who might be the “proper party to a claim for cancellation.” Id.

Respondent has a number of trademark applications at various stages of proceedings with the USPTO, and has recently filed a Trademark Assignment which identifies the assignee as “Al Fakher for Tobacco Trading & Agencies Co. Ltd., Doing Business As Sierra Network, Inc.” A true and correct copy of the receipt from the USPTO for the recording of assignment from Bassam Hamade to Respondent and Sierra is attached hereto as Exhibit “D.” Such action further establishes Respondent’s recognition and endorsement of Sierra as standing in its shoes in all enforcement and litigation actions.

IV. **PETITIONER’S ADDITIONAL CLAIMS IN ITS REPLY ARE MOOT BECAUSE RESPONDENT HAS PROVIDED THE REQUESTED SUPPLEMENTAL RESPONSES TO PETITIONER’S DISCOVERY REQUESTS AND IS PREPARING EVEN FURTHER SUPPLEMENTAL RESPONSES TO BE PROVIDED IMMINENTLY.**

Petitioner complains in its Reply that Respondent has not provided the requested documents [Reply, pp. 7-8], when, in fact, Respondent has provided all non-privileged documents, within Respondent’s possession, custody or control that are responsive to Petitioner’s requests with little or no objection. Respondent has agreed to obtain additional documents from its principal in Dubai, UAE, to have these translated from Arabic to English, and to provide same within the next two weeks.

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V. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the TTAB stay the Cancellation Action proceedings pending the outcome of the Civil Action.

Dated: January 16, 2009

Respectfully Submitted,

Johnson & Pham, LLP

By: /susan rabin/

Susan Rabin, Esq.
Christopher Q. Pham, Esq.
Attorneys for Respondent
AL-FAKHER FOR TOBACCO TRADING
& AGENCIES CO. LTD.

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing RESPONSE TO SUPPLEMENTAL ORDER FOR STATUS REPORT OF THE PENDING CIVIL ACTION was served by First-Class mail and electronic mail, upon attorney for Petitioner on January 16, 2009 as follows:

Natu J. Patel

The Patel Law Firm, P.C.

2532 Dupont Drive

Irvine, CA 92612

United States

NPatel@thePatelLawFirm.com

DECLARATION OF SUSAN RABIN

I, Susan Rabin, declare as follows:

1. I am an attorney at law at the law firm of Johnson & Pham, LLP, counsel of record for Respondent AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD (“Respondent”). I make this declaration in support of Respondent’s Response to Supplemental Order for Status Report issued by the TTAB December 18, 2008. I have personal knowledge of the information set forth in the declaration and would and could testify to the facts stated if called upon.
2. A true and correct copy of the Sole Distributor Agreement for Illinois dated August 23, 2006 and the Sole Distributor Agreement for Michigan dated August 23, 2006, between Petitioner and Sierra Network, Inc. are attached hereto as Exhibit “A.”
3. A true and correct copy of the Exclusive Distribution Agreement between Respondent and Sierra Network, Inc. is attached hereto as Exhibit “B”.
4. A true and correct copy of Petitioner’s Answer as Defendant in the Civil Action is attached hereto as Exhibit “C.”
5. A true and correct copy of the USPTO issued receipt of the recording of the assignment from Bassam Hamade to Respondent and Sierra Network, Inc. is attached hereto as Exhibit “D.”

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct and to the best of my knowledge.

Executed on the 16th day of January in Woodland Hills, California.

/susan rabin/

Susan Rabin

DECLARATION OF SUSAN RABIN

EXHIBIT A

-illinois

Sole Distributor Agreement**Agreement # 20078****This agreement (The agreement) is made on this day 23 of August 2006, by and between:**

1. **The First Party SIERRA NETWORK, Inc, a company incorporated under the laws of the State of California, having its principal office at 4000 w 139 St, Hawthorne, California - USA (hereinafter called the "Exclusive Distributor ").**

And

2. **The Second Party "Sinbad Grand Cafe". Mr. Akram Allos. (Name of Sub-Distributor) And having its address for correspondence at 21060 Coolidge Highway. Oak Park, MI 48237. Tel: 248-808-3333 Fax: 248-546-5795.S. Permit # M1-T1-24 State Distributor Tobacco LISENCE # 500392 (Hereinafter called " The Sub - Distributor").**

(The First and Second Parties are collectively referred to as the "Parties").**Preamble**

Whereas SIERRA NETWORK, Inc is the Exclusive Distributor in the United States of America of the well-known high quality processed honeyed and flavoured tobacco of AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO., LTD.

Whereas The Exclusive Distributor wishes to enter into this agreement with Sub - Distributor of the well-known high quality processed honeyed and flavoured tobacco of AL-FAKHER T TOBACCO TRADING & AGENCIES CO., LTD, within territory (Defined in Schedule A), all pursuant to the terms and conditions of this agreement.

Whereas The Sub - Distributor is ready, capable and willing to be the Sub - Distributor of the well-known high quality processed honeyed and flavoured tobacco.

Whereas the Parties wish to exert efforts to setup a commercial relation for the purpose of promoting their mutual interests and executing the present Sole Distribution Agreement determining the rights and obligations of each Party. NOW THEREFORE, the Parties hereto have agreed as follows:

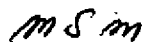
Article 1 Preamble:

For the purpose of this agreement, the above Preamble constitutes an integral part of this agreement and shall be read with it.

Article 2 Definitions

Unless the context requires otherwise, the following terms shall have the meanings assigned to them in this article.

- **"The Products" shall mean the processed honeyed and flavoured tobacco offered for sale in any form of packaging.**
- **The Territory shall mean the states covered by the Agreement as set forth in Schedule A.**
- **"Distribution" means the right to market, distribute and sell the "Products" in the Territory.**



Article 3 Scope of the Agreement

In view of the terms and conditions of the "Sole Agreement", the "First Party (Exclusive Distributor)" hereby grants the "Second Party (Sub-Distributor)", and the "The Second Party (Sub Distributor)" hereby accepts rights to sell and distribute exclusively the "Products" in the "Territory" for a period of Six Months as from the date of this agreement.

Article 4 Work Strategy

1. The Second Party will submit the purchase orders to the First Party two months in advance in order to enable the First Party and the Manufacturer of the product (AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD) to prepare and deliver the required products on time.
2. The First party has the right to decide the price of the products, which should be fair for the each parties and the payment method of the products price, and reserves the right to change the payment policy at any time. The First Party should receive a deposit from the Second Party with every order.
3. Delay in the Advance Payments will be considered as a breach of contract and shall give the First Party the right to deal with the Products as it deems fit, and without any responsibility and/or obligation thereof and will have the right to cancel this agreement.

Article 5 The First Party's (Exclusive Distributor) Obligations

1. The First Party hereby undertakes to supply the Second Party with quality products according to the internal quality and standards of products and packaging adopted by the Manufacturer (AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD) for its products.
2. The First Party hereby undertakes to exert its best efforts to meet the quantity ordered by the Second Party within the period agreed upon by the Parties.
3. The First Party should respond to the Second's party purchase order without any unreasonable delay.
4. The First Party will decide the minimum quantity required by the Second Party per month in order to keep this agreement valid. (Schedule A)
5. The First Party is not responsible for any Tax problems that might be occurred by distributing the products in the territory, and the First Party reserves the right to decide whether to pay the State Tobacco Tax or to forward it to the Second Party. The First Party reserves the right to ensure by evidence that Tobacco Tax in That State has been paid by the Second Party.
6. The First Party will be responsible for Federal Tax and Customs.
7. The First Party undertakes to exert its best efforts to enforce and resolve dispute arising and stop smuggling the products to the USA Markets, and the Second Party is obliged to notify the First Party for any smuggling in order to enable the First Party to take the required procedures.
8. The First Party or/ and the (AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD) are not responsible for any unpaid taxes by the Second Party in his State.

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Article 6 (The Second Party) Sub- Distributor Obligations

1. The Sub-Distributor (The Second Party) in this agreement should willingly accept this designation and to exert all efforts towards the purchases, sales and order transactions as per the terms of this agreement within the territories specified in this agreement only.
2. The Second Party is obliged to Purchase sufficient number of the Products from the First Party and is obliged to display it in reasonable size of his displaying area and should keep enough inventory.
3. The Second Party is obliged to keep a stock for a minimum of three weeks. Failure of the Second Party to meet the above Minimum Commitment requirements shall be deemed material breach of this Agreement.
4. The Second Party is not entitled to place any stickers in any boxes or cases, and should he advertises the product he should mention that he is a Sub-Distributor of the First Party for AL-FAKHER Tobacco products in his territory only.
5. The Second Party is obliged to apply, maintain and renew, at its expense, any permit or other regulatory or governmental approval in the Second Party's name required for the market and sale of the Product throughout the territory. The Second Party will assume all expenses resulting of the product's distribution within the Territory, such as taxes and other fees imposed by the authorities within the Territory.
6. The Second Party shall be responsible for obtaining all regulatory and governmental approvals necessary for the marketing of the Products throughout the Territory, and at its sole expense. The First Party shall provide the Second Party with the necessary technical and other information about the Products as shall be necessary for the Second Party to obtain the approvals, (if any).
7. The Second Party is obliged to notify The First Party of all matters of importance coming to its attention, relating to the Products, competitive information, legislation changes, and market trends.
8. The Second Party should refrain from buying these brand products from any one other than the first party, or selling these products to any national brand chain department stores or the Internet as this right is reserved to the First Party.
9. The Second Party should comply with all applicable laws and regulations in the territory in which it engages and the laws and regulations that apply to the export, sale and/or use of the Product. The Second Party shall bear all expenses and costs related to compliance with such laws and regulations.
10. The Second Party should maintain during the terms of the Agreement, a complete record of all sales of the Products, showing customer's names, date of sales, serial number, and sales order acknowledgement and invoices for all Products covered by this Agreement as well as special terms of the sales. The Second Party shall notify the First Party of each purchase order and the name and address of the customer and the sale price.
11. The Second Party has the right to sell the product in the common states (States without agents / sub-Distributors as long as The Second Party gets written approval from The First Party).
12. The Second Party undertakes to promptly inform the First Party of any possible infringement by third parties of Manufacturer's Intellectual Proprietary Rights including any duplication of the Products.

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Article 7 Advertising & Publishing:

1. The two parties will hold regular discussions on the strategies that should be adopted in displaying the Products for sale in the Territory. The Parties will decide the amount of money to be allocated for the product's sales promotion in the Territory.
2. Should the Second Party decides to advertise the product in his territory, he must obtain a written approval from the First Party.
3. The First Party will provide all sales printed materials and printed advertising materials relevant to the products, and will advertise nation wide for its Sub-distributor.

Article 8 Non- Competition

The Second Party shall not directly or indirectly engage or assist any other person, corporation or other entity to engage in the design, development, manufacture, sale, marketing or use of any product or device that competes with the Product anywhere in the world for the term of this Agreement and two years after its termination, unless otherwise agreed by the First Party.

The Sub- Distributor acknowledges that it has no other know relationship with any other third parties, which would conflict with any interest of the Manufacturer of the products.

Article 9 Warranty :

1. The First Party warrants that the Product is provided according to the quality and standards of products and packaging adopted by the Manufacturer (AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD) for its products.
2. This warranty shall not apply to a Product which has been subject to misuse, unauthorized use, negligence, accident, (including fire, water, explosion, smoke, vandalism, etc.) or which has been dealt with in contrary to the First Party's instructions or any other cause beyond the First Party's control.
3. The Foregoing warranty is the Factory's sole and exclusive warranty of the product.

Article 10 Term & Termination of the Agreement:

This agreement shall enter into force from the effective date set forth in page No. 1 of the agreement and shall remain in force for six months not contradicting with the terms set in this agreement.

The Sub - Distributor hereby acknowledge and declares that termination of this agreement shall not entitle it to any claim, and / or request of recovery of expenses, compensations, loss, damages, lost profit, Etc.

This agreement can be terminated immediately and without serving a notice in the following cases:

- 1- In the event either of the parties voluntarily filing a petition in bankruptcy or liquidation, or has such a petition involuntarily filed against it.
- 2- In the event the Sub Distributor (Second Party) fails to meet its duties identified under this agreement.
- 3- The Sub Distributor (Second Party) assignment and /or transfer of any of its



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rights and duties under this agreement without the prior written approval of the first party.

4- The Sub Distributor violation and breach of any of the terms and provisions, and obligations of this agreement, and non-compliance and/or corrections of the said violations and /or breach within 30 days of the written notice sent to it by the First party.

5- Should the second party sell or distribute the products in territories other than the ones mentioned in this agreement.

6- If the second party did not act according to the required quantities every month, the first party has the right to terminate this agreement within 30 days and the second party can not sue the first party for that.

7- If the Sub distributor (Second Party) tries to abuse AL- FAKHER molasses Tobacco for any other similar brand products, The First Party can cancel this agreement and has the right to inspect that.

8- This agreement is not transferable, and it will be cancelled if anyone of the partners of the Second Party has been changed, or if the Second Party decided to sell his company to someone else, as he has no right to transfer this agreement to the new owner.

Article 11 Amendments:

No Amendment of changes to this Agreement shall take place unless made in writing and signed by the Parties.

Article 12 Assignment:

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either party without the prior written consent of the other party.

Article 13 Force Majeure:

Neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond the party's reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials. In event of any such delay in delivery or payment, the party in delay may defer the performance date for a period equal to the time of such delay. Lack of liquidity by one party, shall not constitute a Force Majeure.

Article 14 Governing Law:

This Agreement shall be governed and construed in accordance with the Arbitration law and regulations of the State of California (and the first party will hire the arbitrator).

Article 15 Headings

The headings of the Articles of this Agreement are inserted only for the purposes of convenience and they shall not be construed as to affect the scope, meaning or intent of the provisions of this Agreement or any part or portion thereof, nor shall they otherwise be given any legal effect.

Article 16 Waiver

Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of the same or any other provision.

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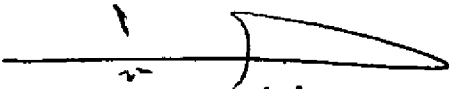
Article 17

This Agreement consists of Seventeen Articles including this Article.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date First above written.

The First Party:

Mamdout S. Mokhtar



Signature:

8/23/06

The Second Party

AKRAM ALLOS



Signature:

8/25/06



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Schedule A (Territory / States):

1. Illinois **LISENCE** required
2. Indiana
3. Iowa
4. Kentucky

Agreement # 20078

Minimum Quantity: Half 20' Container Minimum per Month.

Party Agreed on the following.

1. Party Two will provide Product Liability insurance within 30 days.
2. Party Two Have a Warehouse in the main State of his Distributor Tobacco
LISENCE
3. Party Two will provide copy of his State Distributor Tobacco **LISENCE** within 30 Days.
4. Party Two is fully responsible for **ALL STATE TOBACCO TAXES** in his Territories.
5. Party Two is willing and confirm to sign a Disclosure Agreement within 30 days with Party One.

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-Michigan.

Sole Distributor Agreement

Agreement # 20077

This agreement (The agreement) is made on this day 23 of

1. The First Party SIERRA NETWORK, Inc, a company organized under the laws of the State of California, having its principal office at Hawthorne, California - USA (hereinafter called the

And

2. The Second Party "Sinbad Grand Cafe". Mr. Akram And having its address for correspondence at 21060 Highway 139 St, Oak Park, MI 48237. Tel: 248-808-3333 Fax: 248-546-5795. S. Perm Tobacco LISENCE # 500392 (Hereinafter called the

(The First and Second Parties are collectively referred to as the

Preamble

Whereas SIERRA NETWORK, Inc is the Exclusive Distributor of the well-known high quality processed honeyed tobacco of the United States of America, known as AL-PAKHER FOR TOBACCO TRADING & AGENCIES

Whereas The Exclusive Distributor wishes to enter into an agreement with Sub - Distributor of the well-known high quality processed honeyed tobacco of the United States of America, known as AL-PAKHER T TOBACCO TRADING & AGENCIES (Defined in Schedule A), all pursuant to the terms and conditions of this agreement.

Whereas The Sub - Distributor is ready, capable and willing to enter into an agreement with the Exclusive Distributor of the well-known high quality processed honeyed and flavoured tobacco of the United States of America, known as AL-PAKHER T TOBACCO TRADING & AGENCIES (Defined in Schedule A), all pursuant to the terms and conditions of this agreement.

Whereas the Parties wish to exert efforts to setup a company for the purpose of promoting their mutual interests and executing the provisions of the Agreement determining the rights and obligations of each Party, NOW THEREFORE, the Parties hereto have agreed as follows:

Article 1 Preamble:

For the purpose of this agreement, the above Preamble shall be an integral part of this agreement and shall be read with it.

Article 2 Definitions

Unless the context requires otherwise, the following terms shall have the meanings assigned to them in this article.

- "The Products" shall mean the processed honeyed and flavoured tobacco offered for sale in any form of packaging.
- The Territory shall mean the states covered by the Agreement set forth in Schedule A.
- "Distribution" means the right to market, distribute and sell the "Products" in the Territory.

2006, by and between:

organized under the laws of the State of California, having its principal office at Hawthorne, California - USA (hereinafter called the "Exclusive Distributor").

organized under the laws of the State of California, having its principal office at Hawthorne, California - USA (hereinafter called the "Sub-Distributor").

("The Parties").

the United States of America, known as AL-PAKHER FOR TOBACCO TRADING & AGENCIES

with Sub - Distributor of the well-known high quality processed honeyed tobacco of the United States of America, known as AL-PAKHER T TOBACCO TRADING & AGENCIES (Defined in Schedule A), all pursuant to the terms and conditions of this agreement.

Sub - Distributor of the well-known high quality processed honeyed and flavoured tobacco of the United States of America, known as AL-PAKHER T TOBACCO TRADING & AGENCIES (Defined in Schedule A), all pursuant to the terms and conditions of this agreement.

for the purpose of promoting their mutual interests and executing the provisions of the Agreement determining the rights and obligations of each Party, NOW THEREFORE, the Parties hereto have agreed as follows:

integral part of this agreement and shall be read with it.

the meanings assigned to them in this article.

tobacco offered for sale in any form of packaging.

set forth in Schedule A.

"Products" in the Territory.

Article 3 Scope of the Agreement

In view of the terms and conditions of the "Sole A Exclusive Distributor)" hereby grants the "Second Party" "The Second Party (Sub Distributor)" hereby accepts exclusively the "Products" in the "Territory" for a period of this agreement.

Article 4 Work Strategy

1. The Second Party will submit the purchase order in advance in order to enable the First Party and (AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD) to prepare and deliver the required products on time.
2. The First party has the right to decide the price of fair for the each parties and the payment method reserves the right to change the payment policy should receive a deposit from the Second Party within two months.
3. Delay in the Advance Payments will be considered shall give the First Party the right to deal with the without any responsibility and/or obligation the cancel this agreement.

Article 5 The First Party's (Exclusive Distributor) Obligations

1. The First Party hereby undertakes to supply the products according to the internal quality and packaging adopted by the Manufacturer (AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD) for its products.
2. The First Party hereby undertakes to exert its best efforts to order by the Second Party within the period agreed.
3. The First Party should respond to the Second's purchase order without any unreasonable delay.
4. The First Party will decide the minimum quantity per month in order to keep this agreement valid.
5. The First Party is not responsible for any Tax problem distributing the products in the territory, and the First Party decides whether to pay the State Tobacco Tax or not.
6. The First Party reserves the right to ensure by evidence that the State has been paid by the Second Party.
7. The First Party will be responsible for Federal Tax.
8. The First Party undertakes to exert its best efforts to arising and stop smuggling the products to the territory. The First Party is obliged to notify the First Party for any smuggling.
9. The First Party to take the required procedures.
10. The First Party or/ and the (AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD) are not responsible for a problem in his State.

the "First Party (Exclusive Distributor)", and the "Second Party" shall sell and distribute the "Products" as from the date of this agreement.

The Second Party two months in advance of the purchase order of the product (AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD) to prepare and deliver the required products on time.

The price of the products, which should be fair for the each parties and the payment method reserves the right to change the payment policy should receive a deposit from the Second Party within two months.

Delay in the Advance Payments will be considered shall give the First Party the right to deal with the without any responsibility and/or obligation the cancel this agreement.

The First Party hereby undertakes to supply the products according to the internal quality and packaging adopted by the Manufacturer (AL-FAKHER FOR TOBACCO TRADING & AGENCIES CO. LTD) for its products.

The First Party hereby undertakes to exert its best efforts to order by the Second Party within the period agreed.

The First Party should respond to the Second's purchase order without any unreasonable delay.

The First Party will decide the minimum quantity per month in order to keep this agreement valid.

The First Party is not responsible for any Tax problem distributing the products in the territory, and the First Party decides whether to pay the State Tobacco Tax or not.

The First Party reserves the right to ensure by evidence that the State has been paid by the Second Party.

The First Party will be responsible for Federal Tax.

The First Party undertakes to exert its best efforts to arising and stop smuggling the products to the territory. The First Party is obliged to notify the First Party for any smuggling.

Article 17

This Agreement consists of Seventeen Articles including

Schedule of the Party

IN WITNESS WHEREOF, the Parties hereto have dated First above written.

1. *Amolouh S. Mokhtar*
2. *Amolouh S. Mokhtar*

The First Party:

Amolouh S. Mokhtar

Agreement: 2007

Signature: *Amolouh S. Mokhtar*

8/23/06

Part Two: *Amolouh S. Mokhtar*

1. Party Two will provide for the Party One
2. Party Two will provide for the Party One
3. Party Two will provide for the Party One
4. Party Two will provide for the Party One
5. Party Two will provide for the Party One

Agreement, as of the

Party

Amolouh S. Mokhtar

Amolouh S. Mokhtar

8/23/06

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EXHIBIT B

EXCLUSIVE DISTRIBUTION AGREEMENT

This agreement (The Agreement) is made on this day, 20th July 2006 by and between:

1. The First Party AL FAKHER For TOBACCO Trading and Agencies CO (The owner of Al Fakher Tobacco Trading in Ajman, UAE), a company incorporated under the laws of the Hashemite Kingdom of Jordan, having its principal office at Amman 911145 Jordan 11191, represented herein this agreement by MR. Samer Fakhouri (hereinafter called the "Manufacturer").

And

2. The Second Party SIERRA NETWORK, Inc, a company incorporated under the laws of the State of California, having its principal office at 4000 w 139 St, Hawthorne, California- USA represented herein this agreement by MR Emil Hakim (hereinafter called "The Exclusive Distributor")

(The First and Second Parties are collectively referred to as the "Parties")

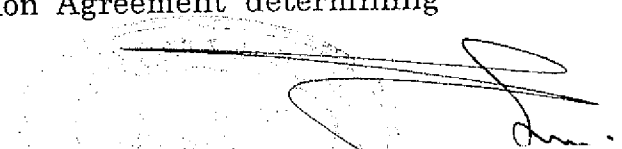
Preamble

Whereas AL FAKHER for TOBACCO Trading & and Agencies is the manufacturer of a well-known high quality processed honeyed and flavored tobacco in all forms of packages.

- A Whereas The Manufacturer wishes to enter into this agreement with an Exclusive Distributor of its well-known high quality processed honeyed and flavored tobacco in the territory the United State of America.
- , all pursuant to the terms and conditions of this agreement;

Whereas SIRRA NETWORK, Inc. is ready, capable and willing to be the Exclusive Distributor of the well-known high quality processed honeyed and flavored tobacco.

Whereas the Parties wish to exert efforts to setup a commercial relation for the purpose of promoting their mutual interests and executing the present Exclusive Distribution Agreement determining

A handwritten signature in dark ink is written over a faint, circular official stamp. The signature is stylized and appears to be a cursive name. The stamp is mostly illegible due to the signature and fading.

the rights and obligations of each Party.

NOW THEREFORE, the parties hereto have agreed as follows:

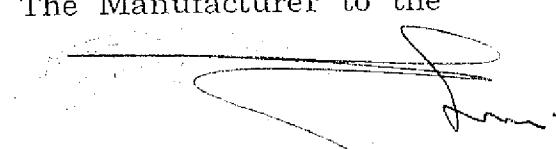
Article 1 Preamble & Schedules & Appendixes

For the Purposes of this Agreement, the above Preamble, along with the Schedules and appendixes attached to this Agreement constitute an integral part of this Agreement and shall be read with it.

Article 2 Definitions

Unless the context requires otherwise, the following terms shall have the meanings assigned to them in this Article.

- B "The products" shall mean the processed honeyed and flavored tobacco offered for sale in any form of packaging.
- C "The Territory" shall mean the geographical area of the United State of America.
- D "Exclusive Distribution" means the exclusive right to market distributes and sells the "Products" in the Territory, pursuant to the terms and provisions of This Agreement.
- E "Intellectual Property Rights" shall mean all Intellectual Property rights related to the Products including but not limited to, Al-Fakher's Trademarks, service marks, trade names, trade dress, logos, slogans , drawings , colors , commercial description of goods, trade secrets , symbols customer list, packages, designs, patents, copyrights, proprietary and ., information enabling accomplishment of a particular task, operation of a particular device or a process, know-how related to the Products and which are all owned, and possessed by the Manufacturer whether in a tangible and/or intangible form, including but not limited to technological information, ideas, inventions, plans, research
- F "The year" shall mean any period of (12) twelve months starting from the date of execution set here above.
- G Confidential Information: any information, data and industrial secrets, considered by the as confidential and supplied and/or exchanged under This Agreement by The Manufacturer to the Exclusive Distributor.



Article 3 Scope of the Agreement

In view of the terms and conditions of the "Agreement" the "Manufacturer" hereby grants the Exclusive Distributor, and the Exclusive Distributor hereby accepts the rights to display sell and distribute the Products" in the "Territory" for a period of Five years. To be renewed upon mutual written agreement by the Parties.

Article 4 Work's Strategy:

1. The Exclusive Distributor will submit the purchase orders to the manufacturer in the form designed by the Manufacturer in (Appendix A) and the Exclusive Distributor has to secure minimum order of 30 tones quarterly to be reviewed semiannually by the manufacturer according to market demand in the territory after thoroughly discussing it with the Exclusive Distributor.
2. Payment by the Exclusive Distributor shall be made by bank transfer as follows: 50% of the payment upon placing the order (Advanced Payment), and the remaining 50% to be paid upon receiving a copy of the bill of lading.
3. Delay in the Advance Payments for more than two weeks as from the date of the issuance of the order, will be considered as a breach of contract and shall give the Manufacturer the right to deal with the Products as it deems fit, and without any responsibility and/or obligation thereof and will have the right to cancel this agreement. The remaining 50% if not paid the Advanced Payment will be confiscated as a penalty and the agreement will be cancelled.
4. The payment process will be in US Dollar through bank transfer to a bank account provided by the Manufacturer.

Article 5 Manufacturer's Obligations


1. The Manufacturer hereby undertakes to supply the Exclusive Distributor with quality products according to the internal quality and standards of products and packaging adopted by the

Manufacturer for its products

2. The Manufacturer hereby undertakes to exert its best efforts to meet the quantity ordered by the Exclusive Distributor within the periods agreed upon by the Parties on monthly bases.
3. The Manufacturer should respond to the Exclusive Distributor's purchase order and exert its best efforts to meet the order and the order shipping date without any unreasonable delay unless there are justified reasons not allowing it to do so. If delay is to take place, the manufacturer must inform the Exclusive Distribution immediately to avoid any damage or loss resulting from such delay.
4. The Manufacturer will not be responsible in case the product was displayed, sold or distributed within the Territory by any third party, without awareness or conception of the Manufacturer. Exclusive Distributor has to report such activities to the manufacturer as soon as he is aware of such activity and the Manufacturer has to exert all efforts to stop such activities.
5. During the term of this Agreement and without the prior written consent of the Exclusive Distributor the manufacturer shall not engage directly or indirectly in the Distribution or selling of the product in the USA Market.
6. Appoint a representative for implementation of this Agreement, who shall serve as a point of contact.

Article 6 Exclusive Distributor Obligations:

1. The Exclusive Distributor in this agreement should willingly accept this designation and to exert the utmost and best efforts towards the purchases, sales and order transactions as per the terms of this agreement.
2. Upon signature of This Agreement, The Exclusive Distributor shall prepare for the Manufacturer's approval a Forecast of the Products to be distributed in the Territory, which Forecast shall be reviewed by the Manufacturer and amended on quarterly basis.

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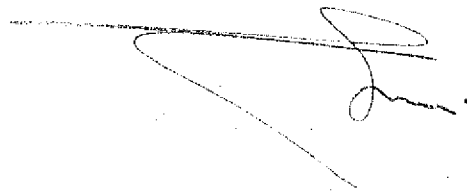
3. Purchase sufficient number of the Products from the Manufacturer in order to meet the Minimum Commitment requirements set out in Article 4, Failure of the Exclusive Distributor to meet the Minimum Commitment requirements shall be deemed material breach of this Agreement.
4. Appoint a representative for implementation of this Agreement, who shall serve as a point of contact. The Representative shall prepare and issue monthly reports detailing the Exclusive Distributor; sales forecast, names of existing and future Customers dealing with the Exclusive Distributor, inventory, sales volume.
5. The Exclusive Distributor will not make any representations or give any warranties concerning the Product or its specifications, which are false or misleading in anyway or go beyond those warranties made by the Manufacturer in this Agreement.
6. Prepare, for the Manufacturer's approval, a marketing plan and budget to reflect the Exclusive Distributor's plans in connection with the Product.
7. Apply, maintain and renew, at its expense, any governmental approval required for the marketing, sale and Exclusive Distribution of the Product throughout the Territory.
8. Notify The Manufacturer of all matters of importance coming to its attention, relating to the Products, competitive information, legislation changes, policies, new products and market trends.
9. Comply with all applicable laws and regulations in the Territory in which it engages and the laws and regulations that apply to the export, sale and/or use of the Product. The Exclusive Distributor shall bear all expenses and costs related to compliance with such laws and regulations.
10. The Exclusive Distributor has no right to change the Product, the method of its display unless other wise a written consent is provided by the Manufacturer.
11. The Exclusive Distributor should display, sell and

distribute the Products within the Territory only unless otherwise mutually agreed in writing by the parties.

12. The Exclusive Distributor will assume all expenses resulting of the product's distribution within the Territory, such as taxes and other fees imposed by the authorities within the Territory.
13. The manufacturer has the right through any of his representatives to oversee the Exclusive Distributors books showing all details of the operation.
14. The Exclusive Distributor shall provide the marketing and sales projection plan including the quantities and time table to be discussed and approved by the Manufacturer.
15. The Exclusive Distributor will provide the manufacture with the cost breakdown and price breakdown to be sold in the Market after it is agreed with the manufacturer and this price breakdown policy should determine the manufacture's selling price.
16. The Exclusive Distributor will not engage to deal directly & indirectly with Agents, Exclusive Distributors and or sole representatives of competitive brands.

Article 7 Appointments of Resellers or Sub-distributors

1. The Exclusive Distributor might appoint resellers or sub-distributors in writing in the USA upon the written approval of the Manufacturer. Any breach of this sub-article shall be considered as a material breach of the Agreement.
2. The Manufacturer has the right to introduce sub-distributors within the market to the Exclusive Distributor. The Exclusive Distributor will sell the product for a price as structured in price breakdown agreed with the manufacturer.
3. The manufacturer has the right to open outlets in the USA market to sell directly to consumers the manufacturer shall by the products from the distributor at wholesale price.



Article 8 Advertising & Publishing:

1. The two parties will hold regular discussions on the strategies that should be adopted in displaying the Products for sale in the Territory the Manufacturer shall decide the amount of money to be allocated for the product's sales promotion in the Territory.
2. The Exclusive Distributor should exert all efforts in promoting the Products and improving the sales within the Territory.
3. The Manufacturer will provide all sales printed materials and printed advertising materials relevant to the products, and the Exclusive Distributor shall fully cooperate with the Manufacturer in this regard as the Manufacturer deems fit.
4. The Manufacture will assume the cost of product advertising and promoting within the territory.

Article 9 Intellectual Proprietary Rights.

1. The Exclusive Distributor should bear in mind that the Intellectual Property Rights of the Products belong to the manufacturer. The Manufacturer shall also have the sole and exclusive ownership rights in any results and information relating to, arising out of or resulting from the performance of this Agreement by the Parties, including, but not limited to all copyrights, marketing information and material.
2. The Exclusive Distributor undertakes to promptly inform the Manufacturer of any possible infringement by third parties of Manufacturer's Intellectual Proprietary Rights and Confidential Information including any duplication of the Products, and to participate with the Manufacturer regarding any legal action against such infringement which, in the Manufacturer's judgment, should be necessary.
3. The Exclusive Distributor shall fully cooperate with the Manufacturer in protecting and enforcing the latter's rights in the Product Intellectual Property Rights and Confidential Information. The Exclusive Distributor undertakes to assist the Manufacturer and take all reasonable actions necessary to

record, register and otherwise establish and prove the Manufacturer's Intellectual Property Rights and Confidential Information concerning the Products, including without limitation executing all documents, affidavits, assignments and assurances and to provide oral testimony.

Article 10 Confidentiality.

1. The Exclusive Distributor agrees to receive in confidence any information disclosed by the Manufacturer, including, but not limited to, the Products, Inventions or technical information or information of a business or commercial nature and all other Intellectual Property Rights (hereinafter referred to as "Confidential Information") and not to disclose any of the Confidential Information to any other person, firm or corporation, and to use the Confidential Information only for the Exclusive Distributor's own use in order to fulfill its obligations under this Agreement.
2. The "Manufacturer" agrees not to unveil any information he receives from the Exclusive Distributor" regarding the present agreement, qualified as confidential and to deal with such confidential information in the same degree of attention as if belongs to him.
3. The Exclusive Distributor agrees that the Confidential Information received from the Manufacturer shall only be disclosed to such of its employees and sales or service representatives that have a need to know about such Confidential Information for a use authorized by this Agreement.
4. The Exclusive Distributor undertakes to bind its employees, officers, sales, technical maintenance and service representatives, and other third parties to whom Confidential Information is disclosed as permitted hereunder, to the terms and conditions contained herein.
5. Unless otherwise specifically stated herein, this Agreement does not grant the Exclusive Distributor any manufacturing,

assembly, production or licensing rights, or any rights in the Intellectual Property Rights of the Manufacturer.

6. The Exclusive Distributor acknowledges and agrees hereby that in the event of any violation hereof, the Manufacturer shall be authorized and entitled to obtain from any court of competent jurisdiction, preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which the Manufacturer shall be entitled under law or under this Agreement.

Article 11 Non Competition

1. The Exclusive Distributor shall not-directly or indirectly or through mediation have an interest, be a partner and/or deal, engage or assist any other person, corporation or other entity to engage in the design, development, manufacture, sale, marketing or use of any product or device that competes with the Product in the USA Market for the term of this Agreement.
2. This term remains effective towards The Exclusive Distributor for Two consecutive years following the termination of This Agreement for any other reason whatsoever, unless otherwise agreed by The Manufacturer.
3. The above provision applies towards The Exclusive Distributor, as well as its subsidiaries, branches, and any other company, in which the Broker is a partner and/or shareholder thereof.
4. The Exclusive Distributor acknowledges that it has no other known relationships with any other third parties, which would conflict with any interest of The Manufacturer.
5. The Exclusive Distributor has the right to use this agreement in the USA courts of law to enforce, resolve any

dispute arising and stop any smuggling to the USA Market after getting the manufacture's approval.

Article 12 Warranties:

1. The Manufacturer warrants that the Product is provided according to the quality standard adopted by it.
2. This warranty shall not apply to a Product which has been subject to misuse, unauthorized use, negligence, accident, (including fire, water, explosion, smoke, vandalism, etc.) or which has been dealt with in contrary to the Manufacturer's instructions or any other cause beyond the Manufacturer's control.
3. The Foregoing Warranty is the Manufacturer's Sole and Exclusive warranty of the Products.

Article 13 Indemnifications:

The Exclusive Distributor shall indemnify, defend, and hold the Manufacturer harmless against any liability, damages, or loss that might occur from any claims, actions, suits, judgments, proceedings, recoveries or expenses, including, but not limited to, attorneys fees, arising out of, based on, or caused by (a) third parties claims against Products provided by the Manufacturer under This Agreement; (b) product claims, representations, or warranties, whether written or oral, made or alleged to be made by the Exclusive Distributor or any of its employees or Exclusive Distributor in its promotion or sale of any of the Products where such product claims or warranties were not provided by, or approved in writing by the Manufacturer, (b) labeling of the Products which was not provided by, or approved by the Manufacturer, (c) negligent handling of the Products by the Exclusive Distributor of any of its employees or Exclusive Distributor.



Article 14 Term & Termination of the Agreement:

- A- This Agreement shall enter into force from the effective Date set forth in page No. 1 of The Agreement and shall remain in force for five years not contradicting with the terms set in this Agreement and renewed automatically unless either of The Parties declares its willingness not to renew the Agreement, accordingly the declaring party should be by give Sixty days' written notice to the other party thereof.
- B- In all cases termination of This Agreement shall not constitute a termination and/or a waiver of the confidentiality, dispute resolution, non-competition, and intellectual property provisions of This Agreement, which shall remain in force in perpetuity.
- C- The Exclusive Distributor hereby acknowledges and declares that termination of This Agreement, shall not entitle it to any claim, and/or request of recovery of expenses, compensations, loss, damages, lost profit. Etc
- D- This Agreement can be terminated immediately and without serving a notice in the following cases:
1. In the event either of the parties voluntarily filing of a petition in bankruptcy or liquidation, or has such a petition involuntarily filed against it.
 2. In the event The Exclusive Distributor fails to meet its duties identified under This Agreement.
 3. In the event The Exclusive Distributor make any change in its current Directors Emil Hakim (Chairman), Ehab Attalla (CFO), Mamdouh Mokhtar (CEO) which, in the opinion of The Manufacturer impairs its rights under This Agreement.
 4. The Exclusive Distributor assignment and/or transfer of any of its rights and duties under This Agreement, without the prior written consent of The Manufacturer.
 5. The Exclusive Distributor violation and breach of any of the terms and provisions, and obligations of This Agreement, and non-compliance and/or

correction of the said violations and/or breach within 30 days of the written notice sent to it by The Manufacturer.

Article 15 Amendments:

No Amendment or changes to this Agreement shall take place unless made in writing and signed by the Parties.

Article 16 Assignments:

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, the Manufacturer may transfer or assign, in whole or in part, any of its rights under this Agreement to any such person or entity controlled by or under common control of the Manufacturer, or to any of its successors.

Article 17 Force Majeure:

Neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond the party's reasonable control, including but not limited to acts of God, war, riot, embargoes, and acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials. In event of any such delay in delivery or payment, the party in delay may defer the performance date for a period equal to the time of such delay. Lack of liquidity by one party, shall not constitute a Force Majeure.

Article 18 Governing Law.

This Agreement shall be governed and construed in accordance with the laws and regulations of the United Arab Emirates.

Article 19 Dispute Resolution

1. The Parties hereto desire to settle all disputes between them quickly, amicably and in the most cost effective manner. In order

to accomplish these goals, the Parties agree to the following provisions, which shall apply to the resolution of any disputes arising out of or relating to this Agreement.

2. The Parties shall make every attempt to resolve any disputes that may arise between them informally and by providing the other Party with notification, specifying to the fullest possible extent, the relevant facts surrounding the dispute or claim and all defenses thereto.
3. In the event the Parties are unable to informally resolve their disputes or claims between themselves within thirty (30) days after the initial notification of the dispute or claim, despite their good faith efforts to do so, the Parties agree to submit to non-binding mediation before mutually agreeable mediators, with the Parties to jointly share the costs of such mediation, with each Party bearing fifty percent (50%) of said costs.
4. In the event the Parties are still unable to resolve their dispute or the claim presented, despite their good faith mediation efforts, disputes and claims shall be resolved in confidential arbitral proceedings by a binding UAE arbitration forum of three members to be held in the UAE as provided hereunder.
5. Each party shall have the right to appoint one arbitrator and the two appointed arbitrators should agree on appointing the third arbitrator.
6. The arbitrators shall have the authority to permit discovery to the extent they deem appropriate, and shall have the authority to grant injunctive relief in a form substantially similar to that, which would otherwise be granted by a court of law or equity.
7. The arbitrators shall have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages; any damages awarded must conform to the terms and conditions of THIS AGREEMENT, and the arbitrators shall specify in writing the basis for any damage award and the types of damages awarded.

8. The decision of the arbitrators shall remain confidential and be final and binding upon the Two Parties. The prevailing party in the arbitration proceedings shall be awarded reasonable attorneys' fees, expert witness costs and expenditures, and all other costs and expenditures incurred directly or indirectly in connection with the proceedings, unless the arbitrators shall, for good cause, determine otherwise.

Article 20 Headings

The headings of the Articles of this Agreement are inserted only for the purposes of convenience and they shall not be construed as to affect the scope, meaning or intent of the provisions of this Agreement or any part or portion thereof, nor shall they otherwise be given any legal effect.

Article 21 Notices.

Any notice given by either party in accordance with this Agreement shall be made in writing and delivered by registered mail or by courier to the addressed set forth in the beginning of this Agreement, or to other addresses as the parties shall designate in prior written notice.

Article 22 Waivers

Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of the same or any other provision.

Article 23 Severability

If any provision of this Agreement is determined to be invalid or unenforceable, the provision shall be deemed to be severable from the remainder of this Agreement. The parties shall make their best efforts in order to render effective such provisions of this Agreement not affected thereby and this Agreement will continue in full force and effect.

Article 24 The Entire Agreement.

This Agreement including all schedules constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understanding or representations, oral or written between the parties hereto regarding such matter.

Article 25: Relationship

A- Nothing in This agreement shall be construed to form a relationship between the Parties under which they might be considered as partners, joint ventures, agency, employment relationship, or any sort of such representation on each other's behalf.

B- The activities carried by The Exclusive Distributor under This Agreement shall be binding on the Parties only to the extent explicitly stated herein, and any further definition of the commercial relationships between the Parties shall be subject to separate agreements covering each project.

Article 26 Language

This Agreement shall be made in English. The said language shall be controlling in all respects. Any and all correspondence, documents or notices exchanged between the Parties and/or third party relating to this Agreement shall be in the English only.

Article 27

This Agreement consists of twenty-seven Articles including this Article.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date first above written.

The First Party

Name: Samer Fakhouri
Title: General Manager

Signature :



The Second Party

Name: Emil Hakim
Title: Chairman

Signature:



EXHIBIT C

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SIERRA NETWORK, INC., a California Corporation,) Case No.: CV07-06104
)
Plaintiff,) Assigned for all purposes to
) Honorable Judge Dale S.
vs.) Fischer
)
TOBACCO IMPORT USA., a business entity of unknown status; SINBAD GRAND CAFE, LLC, a Michigan Limited Liability Company; AL FAKHER TRADING COMPANY, L.L.C., a business entity of unknown status; WWW.DUBAITOBACCO.COM, an Internet Business Entity, WWW.ALFAKHER.US, an Internet Business Entity, WWW.ALFAKHIR.COM, an Internet Business Entity, Corporations 1-10, Limited Liability Companies A-Z, and DOES 1-20 Inclusive,) DEFENDANTS SINBAD GRAND CAFE, LLC AND TOBACCO IMPORT USA'S ANSWER AND AFFIRMATIVE DEFENSES; SINBAD GRAND CAFE, LLC, DOING BUSINESS AS TOBACCO IMPORT USA'S COUNTERCLAIM FOR UNFAIR COMPETITION
)
Defendants.)
)
SINBAD GRAND CAFE, LLC, doing business as TOBACCO IMPORT USA,)

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Counter-claimant,)
)
vs.)
)
SIERRA NETWORK, INC., a California)
Corporation, and ROES 1-10, Inclusive,)
)
Counter-defendants.)
)
)
)

Defendants, SINBAD GRAND CAFE, LLC and TOBACCO IMPORT
USA (collectively "Defendants")¹, answer SIERRA NETWORK, INC.'s
("Plaintiff" or "SIERRA") Complaint for Copyright Infringement, False
Designation of Origin, Trademark Dilution, Unfair Business Practices, Unjust
Enrichment, Fraud and Deceit, and Cybersquatting on file herein and admit,
deny, and aver as follows:

ANSWER

1. With respect to the allegations of paragraph 1, Defendants admit
that this action arises under the copyright laws of the United States, 17 U.S.C.
§101 *et seq.* as well as out of §43(a) of the *Lanham Act* for trademark
infringement and trademark dilution. Defendants further admit that jurisdiction

¹ Sinbad Grand Cafe, LLC is a Michigan limited liability company doing business as Tobacco Import USA

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DEFENDANT SINBAD GRAND CAFE, LLC AND TOBACCO IMPORT USA'S ANSWER AND AFFIRMATIVE DEFENSES; SINBAD
GRAND CAFE, LLC DOING BUSINESS AS TOBACCO IMPORT USA'S COUNTERCLAIM FOR UNFAIR COMPETITION

1 is conferred upon this Court by virtue of 28 U.S.C. §§1331, 1338(a) and (b),
2 1367(a), and 15 U.S.C. §1121.

3 2. With respect to the allegations of paragraph 2, Defendants admit
4 that venue is proper in this district and that the court has determined Defendants
5 are subject to personal jurisdiction within this district. With respect to the
6 remainder of paragraph 2, Defendants deny that any events or omissions which
7 gave rise to any claims occurred, or that Plaintiff suffered any substantial
8 injury.
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12 3. With respect to the allegations of paragraph 3, Defendants admit
13 that the court has determined that the exercise of personal jurisdiction over
14 Defendant is proper.
15

16 **THE PARTIES**

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18 4. With respect to the allegations of paragraph 4, Defendants lack
19 information sufficient to form a belief as to the truth of the allegations of
20 Paragraph 4 and therefore leave Plaintiff to its proof.
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22 5. With respect to the allegations of paragraph 5, Sinbad Grand Cafe,
23 LLC admits that it doing business as Tobacco Import USA. Sinbad Grand
24 Cafe, LLC further admits that it is a licensed agent of Al Fakher Trading
25 Company L.L.C., and has offices in Michigan, located at 21060 Coolidge
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1 Highway, Oakpark, Michigan 48237. Sinbad Grand Cafe denies that it has
2 offices in California, Oregon, Toronto, Donguan China, and Hong Kong.

3 6. With respect to the allegations of paragraph 6, Sinbad Grand Café
4 admits that it is a Michigan limited liability company doing business as
5 Tobacco Import USA.
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7 7. With respect to the allegations of paragraph 7, Defendants admit
8 that Al Fakher Trading Company, L.L.C. is a limited liability company located
9 in Dubai, United Arab Emirates.
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11 8. With respect to the allegations of paragraph 8, Defendants lack
12 information sufficient to form a belief as to the truth of the allegations of
13 Paragraph 8 and therefore leave Plaintiff to its proof.
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15 9. With respect to the allegations of paragraph 9, Defendants lack
16 information sufficient to form a belief as to the truth of the allegations of
17 Paragraph 9 and therefore leave Plaintiff to its proof.
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19 10. With respect to the allegations of paragraph 10, Defendants lack
20 information sufficient to form a belief as to the truth of the allegations of
21 Paragraph 10 and therefore leave Plaintiff to its proof.
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23 11. With respect to the allegations of paragraph 11, Defendants lack
24 information sufficient to form a belief as to the truth of the allegations of
25 Paragraph 11 and therefore leave Plaintiff to its proof.
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GENERAL ALLEGATIONS

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2 12. With respect to the allegations of paragraph 12, Defendants lack
3 information sufficient to form a belief as to the truth of the allegations of
4 Paragraph 12 and therefore leave Plaintiff to its proof.
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6 13. With respect to the allegations of paragraph 13, Defendants lack
7 information sufficient to form a belief as to the truth of the allegations of
8 Paragraph 13 and therefore leave Plaintiff to its proof.
9

10 14. With respect to the allegations of paragraph 14, Defendants lack
11 information sufficient to form a belief as to the truth of the allegations of
12 Paragraph 14 and therefore leave Plaintiff to its proof.
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14 15. With respect to the allegations of paragraph 15, Defendants lack
15 information sufficient to form a belief as to the truth of the allegations of
16 Paragraph 15 and therefore leave Plaintiff to its proof.
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18 16. With respect to the allegations of paragraph 16, Defendants lack
19 information sufficient to form a belief as to the truth of the allegations of
20 Paragraph 16 and therefore leave Plaintiff to its proof.
21

22 17. With respect to the allegations of paragraph 17, Defendants lack
23 information sufficient to form a belief as to the truth of the allegations of
24 Paragraph 17 and therefore leave Plaintiff to its proof.
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1 18. With respect to the allegations of paragraph 18, Defendants lack
2 information sufficient to form a belief as to the truth of the allegations of
3 Paragraph 18 and therefore leave Plaintiff to its proof.
4

5 19. With respect to the allegations of paragraph 19, Defendants lack
6 information sufficient to form a belief as to the truth of the allegations of
7 Paragraph 19 and therefore leave Plaintiff to its proof.
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9 20. With respect to the allegations of paragraph 20, Defendants lack
10 information sufficient to form a belief as to the truth of the allegations of
11 Paragraph 20 and therefore leave Plaintiff to its proof.
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13 21. With respect to the allegations of paragraph 21, Defendants lack
14 information sufficient to form a belief as to the truth of the allegations of
15 Paragraph 21 and therefore leave Plaintiff to its proof.
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17 22. With respect to the allegations of paragraph 22, Defendants lack
18 information sufficient to form a belief as to the truth of the allegations of
19 Paragraph 22 and therefore leave Plaintiff to its proof.
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22 23. With respect to the allegations of paragraph 23, Defendants lack
23 information sufficient to form a belief as to the truth of the allegations of
24 Paragraph 23 and therefore leave Plaintiff to its proof.
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1 24. With respect to the allegations of paragraph 24, Defendants lack
2 information sufficient to form a belief as to the truth of the allegations of
3 Paragraph 24 and therefore leave Plaintiff to its proof.
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5 25. With respect to the allegations of paragraph 25, Defendants lack
6 information sufficient to form a belief as to the truth of the allegations of
7 Paragraph 25 and therefore leave Plaintiff to its proof.
8

9 26. Defendants deny the allegations in Paragraph 26.
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11 27. Defendants deny the allegations in Paragraph 27.
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13 28. With respect to the allegations of paragraph 28, Defendants lack
14 information sufficient to form a belief as to the truth of the allegations of
15 Paragraph 28 and therefore leave Plaintiff to its proof.
16

17 **FIRST CAUSE OF ACTION**

18 **(Federal Copyright Infringement Against All Defendants, Corporations 1-**
19 **10; Limited Liability Companies A-Z; and Does I-X, Inclusive)**
20 **[17 U.S.C. §501(a)]**

21 29. Defendants repeat and reaffirm every answer to Paragraphs 1-28.
22

23 30. With respect to the allegations of paragraph 30, Defendants lack
24 information sufficient to form a belief as to the truth of the allegations of
25 Paragraph 30 and therefore leave Plaintiff to its proof.
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27 31. With respect to the allegations of paragraph 31, Defendants lack
28 information sufficient to form a belief as to the truth of the allegations of
Paragraph 31 and therefore leave Plaintiff to its proof.

1 32. With respect to the allegations of paragraph 32, Defendants lack
2 information sufficient to form a belief as to the truth of the allegations of
3 Paragraph 32 and therefore leave Plaintiff to its proof.
4

5 33. Defendants deny the allegations in Paragraph 33.

6 34. Defendants deny the allegations in Paragraph 34.

7 35. Defendants deny the allegations in Paragraph 35.
8

9 **SECOND CAUSE OF ACTION**

10 **(False Designation of Origin and Unfair Competition Against All**
11 **Defendants Corporations 1-10; Limited Liability Companies A-Z; and**
12 **Does I-X, Inclusive)**
 [15 U.S.C. §1125(a)]

13 36. Defendants repeat and reaffirm every answer to Paragraphs 1-35.
14

15 37. With respect to the allegations of paragraph 37, Defendants lack
16 information sufficient to form a belief as to the truth of the allegations of
17 Paragraph 37 and therefore leave Plaintiff to its proof.
18

19 38. With respect to the allegations of paragraph 38, Defendants lack
20 information sufficient to form a belief as to the truth of the allegations of
21 Paragraph 38 and therefore leave Plaintiff to its proof.
22

23 39. With respect to the allegations of paragraph 39, Defendants lack
24 information sufficient to form a belief as to the truth of the allegations of
25 Paragraph 39 and therefore leave Plaintiff to its proof.
26
27
28

1 40. With respect to the allegations of paragraph 40, Defendants lack
2 information sufficient to form a belief as to the truth of the allegations of
3 Paragraph 40 and therefore leave Plaintiff to its proof.
4

5 41. With respect to the allegations of paragraph 41, Defendants lack
6 information sufficient to form a belief as to the truth of the allegations of
7 Paragraph 41 and therefore leave Plaintiff to its proof.
8

9 **THIRD CAUSE OF ACTION**

10 **(Dilution by Tarnishment Against All Defendants, Corporations 1-10;**
11 **Limited Liability Companies A-Z; and Does I-X, Inclusive)**
12 **[15 U.S.C. § 1125(c), California Business and Professions Code § 14330 *et***
13 ***seq.*, and California Common Law]**

14 42. Defendants repeat and reaffirm every answer to Paragraphs 1-41.

15 43. With respect to the allegations of paragraph 43, Defendants lack
16 information sufficient to form a belief as to the truth of the allegations of
17 Paragraph 43 and therefore leave Plaintiff to its proof.
18

19 44. With respect to the allegations of paragraph 44, Defendants lack
20 information sufficient to form a belief as to the truth of the allegations of
21 Paragraph 44 and therefore leave Plaintiff to its proof.
22

23 45. Defendants deny the allegations in Paragraph 45.

24 46. With respect to the allegations of paragraph 46, Defendants lack
25 information sufficient to form a belief as to the truth of the allegations of
26 Paragraph 46 and therefore leave Plaintiff to its proof.
27
28

1 47. Defendants deny the allegations in Paragraph 47.

2 48. Defendants deny the allegations in Paragraph 48.

3 49. Defendants deny the allegations in Paragraph 49.

4 50. Defendants deny the allegations in Paragraph 50.

5 51. Defendants deny the allegations in Paragraph 51.

6 52. Defendants deny the allegations in Paragraph 52.

7
8
9 **FOURTH CAUSE OF ACTION**

10 **Unlawful, Unfair, Fraudulent Business Practices Against All**
11 **Defendants, Corporations 1-10; Limited Liability Companies A-Z; and**
12 **Does I-X, Inclusive)**

13 **[California Business & Professions Code §17200 *et seq.*]**

14 53. Defendants repeat and reaffirm every answer to Paragraphs 1-52.

15 54. Defendants deny the allegations in Paragraph 54.

16 55. Defendants deny the allegations in Paragraph 55.

17 56. Defendants deny the allegations in Paragraph 56.

18 57. Defendants deny the allegations in Paragraph 57.

19 58. With respect to the allegations of paragraph 58, Defendants lack

20 information sufficient to form a belief as to the truth of the allegations of

21 Paragraph 58 and therefore leave Plaintiff to its proof.

22 59. With respect to the allegations of paragraph 59, Defendants lack

23 information sufficient to form a belief as to the truth of the allegations of

24 Paragraph 59 and therefore leave Plaintiff to its proof.

1 60. With respect to the allegations of paragraph 60, Defendants lack
2 information sufficient to form a belief as to the truth of the allegations of
3 Paragraph 60 and therefore leave Plaintiff to its proof.
4

5 **FIFTH CAUSE OF ACTION**

6 **Unjust Enrichment**

7 **(Unjust Enrichment Against All Defendants, Corporations 1-10; Limited**
8 **Liability Companies A-Z; and Does I-X, Inclusive)**

9 61. Defendants repeat and reaffirm every answer to Paragraphs 1-60.

10 62. Defendants deny the allegations in Paragraph 62.

11 63. With respect to the allegations of paragraph 63, Defendants lack
12 information sufficient to form a belief as to the truth of the allegations of
13 Plaintiff's expenditure of substantial time, resources, and effort to obtain an
14 excellent reputation in Paragraph 63 and therefore leave Plaintiff to its proof.
15
16 Defendants deny the remaining allegations in Paragraph 63.

17 63(sic). Defendants deny the allegations in Paragraph 63(sic).
18
19

20 **SIXTH CAUSE OF ACTION**

21 **(Intentional Fraud and Deceit/Fraudulent Concealment Against All**
22 **Defendants, Corporations 1-10; Limited Liability Companies A-Z; and**
23 **Does I-X, Inclusive)**

24 64. Without acknowledging any right of Plaintiff to re-plead this
25 claim, Defendants deny paragraphs 64-68 in their entirety.²

26 **SEVENTH CAUSE OF ACTION**
27

28

² Plaintiff's claim for fraud was dismissed with prejudice by the court on August 4, 2008.

**(Cybersquatting Against all Defendants, Corporations 1-10; Limited Liability Companies A-Z; and Does 1-10, Inclusive)
(U.S.C. §43(d))**

69. Defendants repeat and reaffirm every answer to Paragraphs 1-68.

70. With respect to the allegations of paragraph 70, Defendants lack information sufficient to form a belief as to the truth of the allegations of Paragraph 70 and therefore leave Plaintiff to its proof.

71. Defendants deny the allegations in Paragraph 71.

72. Defendants deny the allegations in Paragraph 72.

73. Defendants deny the allegations in Paragraph 73.

PRAYER FOR RELIEF

A. With respect to the allegations of paragraph A, Defendants deny that Plaintiff is entitled to the relief claimed therein.

B. With respect to the allegations of paragraph B, Defendants deny that Plaintiff is entitled to the relief claimed therein.

C. With respect to the allegations of paragraph C, Defendants deny that Plaintiff is entitled to the relief claimed therein.

D. With respect to the allegations of paragraph D, Defendants deny that Plaintiff is entitled to the relief claimed therein.

E. With respect to the allegations of paragraph E, Defendants deny that Plaintiff is entitled to the relief claimed therein.

1 F. With respect to the allegations of paragraph F, Defendants deny
2 that Plaintiff is entitled to the relief claimed therein.

3 G. With respect to the allegations of paragraph G, Defendants deny
4 that Plaintiff is entitled to the relief claimed therein.
5

6 H. With respect to the allegations of paragraph H, Defendants deny
7 that Plaintiff is entitled to the relief claimed therein.
8

9 I. With respect to the allegations of paragraph I, Defendants deny
10 that Plaintiff is entitled to the relief claimed therein.
11

12 J. With respect to the allegations of paragraph J, Defendants deny
13 that Plaintiff is entitled to the relief claimed therein.
14

15 K. With respect to the allegations of paragraph K, Defendants deny
16 that Plaintiff is entitled to the relief claimed therein.
17

18 L. With respect to the allegations of paragraph L, Defendants deny
19 that Plaintiff is entitled to the relief claimed therein.
20

21 M. With respect to the allegations of paragraph M, Defendants deny
22 that Plaintiff is entitled to the relief claimed therein.
23

24 N. With respect to the allegations of paragraph N, Defendants deny
25 that Plaintiff is entitled to the relief claimed therein.
26

27 ///

28 ///

AFFIRMATIVE DEFENSES

Without admitting any allegations of the Complaint not otherwise admitted, Defendants aver and assert affirmative defenses as follows:

FIRST AFFIRMATIVE DEFENSE
(Trademark Misuse)

Plaintiff's claims are barred, in whole or in part, because Plaintiff has unfairly used its trademark registrations to promote its monopoly trademark rights.

SECOND AFFIRMATIVE DEFENSE
(Trademark Invalidity)

Plaintiff's claims are barred, in whole or in part, because Plaintiff's trademark registrations are invalid.

THIRD AFFIRMATIVE DEFENSE
(No Trademark Infringement)

Plaintiff's claims are barred, in whole or in part, because Defendants have not infringed upon Plaintiff's trademarks.

FOURTH AFFIRMATIVE DEFENSE
(Fair Use)

Plaintiff's claims are barred, in whole or in part, because of the doctrine of fair use.

///

///

FIFTH AFFIRMATIVE DEFENSE
(Lack of Evidence)

Plaintiff's claims are barred, in whole or in part, because there is no clear and convincing evidence in support thereof.

SIXTH AFFIRMATIVE DEFENSE
(Authority, Legal Right, Necessity, Justification and/or Privilege)

Plaintiff's claims are barred, in whole or in part, because Defendants had the authority, legal right, necessity, justification and/or was privileged to act as it did.

SEVENTH AFFIRMATIVE DEFENSE
(Good Faith)

Plaintiff's claims are barred, in whole or in part, because Defendants acted in good faith at all material times.

EIGHTH AFFIRMATIVE DEFENSE
(Consent of Plaintiff)

Plaintiff's claims are barred, in whole or in part, because Plaintiff consented, agreed to and/or authorized the acts complained of.

NINTH AFFIRMATIVE DEFENSE
(Estoppel)

Plaintiff's claims are barred, in whole or in part, because of the doctrine of estoppel.

///

TENTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff's claims are barred, in whole or in part, because of the doctrine of waiver.

ELEVENTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiff's claims are barred, in whole or in part, because of the doctrine of laches.

TWELFTH AFFIRMATIVE DEFENSE

(Acquiescence)

Plaintiff's claims are barred, in whole or in part, because it has acquiesced to Defendants' use.

THIRTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff's claims are barred, in whole or in part, because of the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

(Fraud)

Plaintiff's claims are barred, in whole or in part, because the right to use its marks was obtained fraudulently.

///

///

FIFTEENTH AFFIRMATIVE DEFENSE
(Conditions Precedent)

Plaintiff's claims are barred, in whole or in part for failure to properly satisfy all conditions precedent as required by statute, rule, and/or common law.

SIXTEENTH AFFIRMATIVE DEFENSE
(Third Party Acts)

Plaintiff's claims are barred, in whole or in part, because the acts or omissions of third parties over which Defendants have no control caused any damages that Plaintiff seeks to recover.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)

The Complaint fails to state a claim upon which relief can be granted and, therefore should be dismissed.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Res Judicata)

Plaintiff's claims are barred, in whole or in part by the doctrine of Res Judicata.

NINETEENTH AFFIRMATIVE DEFENSE
(Copyright Invalidity)

Plaintiff's claims are barred, in whole or in part, because Plaintiff's copyright, if any, is invalid.

///

///

TWENTIETH AFFIRMATIVE DEFENSE
(No Copyright Infringement)

Plaintiff's claims are barred, in whole or in part, because Defendants' allegedly infringing work is not substantially similar to Plaintiff's alleged copyrighted work.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(Merger)

Plaintiff's copyright infringement claim is barred by the doctrine of merger.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(No Irreparable Harm)

Plaintiff has suffered no harm and/or irreparable harm.

///

///

TWENTY-THIRD AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

Defendants reserve the right to assert additional affirmative defenses in the event that the additional defenses become apparent during the course of this proceeding.

Dated: August 14, 2008

Respectfully Submitted,
THE PATEL LAW FIRM, P.C.



Natu J. Patel (SBN 188618)
2532 Dupont Drive
Irvine, California 92612-1524
Office: 949.955.1077
Facsimile: 949.955.1877
NPatel@thepatellawfirm.com

Attorney for Defendants Sinbad Grand
Café, LLC and Tobacco Import USA;
and Counter-claimant Sinbad Grand Cafe
doing business as Tobacco Import USA

DEFENDANTS' DEMAND FOR JURY TRIAL

Defendants hereby make a demand for jury trial under Rule 38 of the Federal Rules of Civil Procedure on all issues that may be tried by jury.

Dated: August 14, 2008

Respectfully Submitted,
THE PATEL LAW FIRM, P.C.



Natu J. Patel (SBN 188618)
2532 Dupont Drive
Irvine, California 92612-1524
Office: 949.955.1077
Facsimile: 949.955.1877
NPatel@thepatellawfirm.com

Attorney for Defendants Sinbad Grand
Café, LLC and Tobacco Import USA;
and Counter-claimant Sinbad Grand Cafe
doing business as Tobacco Import USA

COUNTERCLAIM

1
2 A. Counter-claimant, SINBAD GRAND CAFE, LLC, a Michigan
3 limited liability company doing business as TOBACCO IMPORT USA
4
5 (hereinafter "Counter-claimant" or "Sinbad Grand Café"), hereby incorporates
6 all of the allegations of the preceding Answer to the Complaint into this
7
8 Counterclaim.

9 B. The Counterclaim by Counter-claimant against SIERRA
10 NETWORK, INC. ("SIERRA") for a declaratory judgment and other relief,
11
12 *inter alia*, arises under the trademark laws of the United States, the Lanham Act
13 (Title 15 of the United States Code ("U.S.C.") §1051 *et seq.*), and the
14
15 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking that Plaintiff's
16 alleged trademark is invalid. The unfair competition claim by Counter-claimant
17
18 against SIERRA arises under the common law as adopted by the courts of
19 Michigan as well as Michigan Compiled Laws §445.901, *et seq.*

20
21 **THE PARTIES**

22 C. SINBAD GRAND CAFE is a limited liability corporation of the
23 State of Michigan, doing business as TOBACCO IMPORT USA.
24

25 D. Counter-claimant is informed and believes, and based upon such
26 information and belief alleges, that SIERRA, at all times relevant to this
27
28

1 Complaint, was and is a corporation organized and existing under the laws of
2 the State of California.

3 E. The true names and capacities, whether individual, corporate,
4 associate, or otherwise, of Counter-defendants ROES 1 through 10, inclusive,
5 are unknown to Counter-claimant at this time, and Counter-claimant, therefore,
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sues said Counter-defendants by such fictitious names. Counter-claimant will
ask leave of Court to amend this Counter-complaint when the same shall have
been ascertained. Counter-claimant is informed and believes and thereon
alleges that each ROE defendant was responsible intentionally, or in some other
actionable manner, for the events and happenings referred to herein, which
proximately caused injury and damage to Counter-claimant, as hereinafter
alleged.

F. Any reference to SIERRA or Cross-defendant shall refer to each
named defendant and all ROE defendants, and to each of them.

JURISDICTION AND VENUE

G. This court has jurisdiction over the subject matter of all
Counterclaims under 28 U.S.C. §§ 1331, 1338, 1367(a), 2201, 2202, and
pursuant to the trademark laws of the United States, 15 U.S.C. §§1051 *et seq.*
This Honorable court has determined that the exercise of specific personal
jurisdiction over the Counter-claimant is warranted. This court also has

pendent jurisdiction over the state claims of unfair competition under the common law as adopted by the courts of Michigan as well as Michigan Compiled Laws §445.901, *et seq.* Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400 since SIERRA has submitted itself to the jurisdiction of this Honorable Court. Furthermore, SIERRA is a corporation of the State of California.

BACKGROUND OF RELEVANT FACTS

H. Counter-claimant realleges and incorporates by reference the allegations of all of the preceding paragraphs of this Answer and Counterclaim, above, inclusive as if fully set forth herein.

I. This Counterclaim concerns issues related to Counter-defendant's accusations of trademark infringement against Counter-claimant regarding the trademark "Al-Fakher", a mark registered November 11, 2003, on the Principal Register of the United States Patent and Trademark Office ("USPTO"), registration number 2782619, in International Class 34 ("AL-FAKHER").

J. Counter-claimant is an exclusive licensed distributor of flavored tobacco products manufactured by the Al Fakher Trading Co. (L.L.C.) of Dubai, United Arab Emirates. ("AL FAKHER TRADING COMPANY")

1 K. The flavored tobacco products imported from the United Arab
2 Emirates by Counter-claimant are marketed under the brand name "Dubai
3 Tobacco".
4

5 L. The United Arab Emirates ("UAE") is a Middle Eastern federation
6 of seven states. The seven states, termed emirates, are Abu Dhabi, Ajman,
7 Dubai, Fujairah, Ras al-Khaimah, Sharjah, and Umm al-Quwain.
8

9 M. AL FAKHER TRADING COMPANY is a manufacturer of
10 tobacco products, legally registered and licensed in Dubai, UAE on October 25,
11 1999 as a limited liability company. AL FAKHER TRADING COMPANY
12 markets products under the trade name "ALFAKHER TRADING CO L.L.C."
13
14 A copy of the foreign registration is attached hereto as Exhibit A.
15

16 N. AL FAKHER TRADING COMPANY owns trademark rights in
17 Dubai to various trademarks, including, but not limited to, "Dubai Al Fakher",
18 and "Al Fakher International". Copies of the two example registrations are
19 attached hereto as Exhibit B.
20
21

22 O. Counter-claimant is informed and believes, and based upon such
23 information and belief alleges, that at some time between October 25, 1999 and
24 November 11, 2003, AL FAKHER TRADING COMPANY sold, and/or
25 distributed products to areas within the United States, including products
26 bearing its trade name.
27
28

1 P. Counter-claimant alleges that since AL FAKHER TRADING
2 COMPANY has used its trade name in commerce prior to the registration of the
3 trademark AL-FAKHER, it is entitled to common law rights and use of its trade
4 name and trademarks.
5

6 Q. Counter-claimant is informed and believes, and based upon such
7 information and belief alleges, that since AL FAKHER TRADING COMPANY
8 is entitled to common law rights. Counter-claimant, as the exclusive agent of
9 AL FAKHER TRADING COMPANY, is entitled to exercise those common
10 law rights and protections afforded to its principal.
11
12

13 R. Counter-claimant alleges that even though Counter-claimant is
14 legally entitled to utilize its principal's trade name to market its products,
15 Counter-defendant has unfairly and in bad faith threatened customers of
16 Counter-claimant with unwarranted legal action. Such action has caused
17 irreparable damage to Counter-claimant's sales, business relations and
18 reputation.
19
20
21

22 **COUNTERCLAIM FOR UNFAIR COMPETITION**
23 **Violation of Michigan Consumer Protection Act**
24 **[Michigan Compiled Laws §445.901, *et seq.*]**
25 **(Against Counter-Defendant SIERRA)**

26 S. Counter-claimant realleges and incorporates by reference the
27 allegations of all of the preceding paragraphs of this Answer and Counterclaim,
28 above, inclusive as if fully set forth herein.

1 T. Counter-claimant alleges that Counter-defendant has engaged in
2 unfair competition and unfair business practices by deliberately, maliciously,
3 deceptively, and oppressively pressuring and threatening Counter-claimant's
4 customers in an attempt to damage Counter-claimant's sales, business relations
5 and reputation as follows:
6

7
8 (i) As an example, Counter-claimant is informed and believes, and
9 based upon such information and belief alleges, that on or about
10 July 2008, an agent of Counter-defendant's licensor, a Mr. Ameer
11 Hakeem, threatened one of Counter-claimant's Florida
12 distributors, Mr. Khaled Ahmad, falsely claiming that the "Dubai
13 Tobacco" products Mr. Ahmad was selling were fake products.
14 Mr. Hakeem also threatened that if Mr. Ahmad did not desist, the
15 Bureau of Alcohol Tobacco and Firearms would fine Mr. Ahmad
16 and have his products confiscated.
17
18
19
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21

22 (ii) Counter-claimant is informed and believes, and based upon such
23 information and belief alleges, that agents of Counter-defendant
24 have physically threatened agents of Counter-claimant and/or
25 Counter-claimant's customers. Counter-claimant alleges that in
26 one such instance, one of Counter-defendant's distributors in
27
28

1 Michigan verbally assaulted and attempted to physically injure an
2 agent of Counter-claimant.

3 U. Counter-claimant is informed and believes, and based upon such
4 information and belief, alleges that Counter-defendant's actions constitute
5 actionable wrongs under Michigan Compiled Laws §445.901 *et seq.* by
6 disparaging the goods, services, business, or reputation of Plaintiff by false or
7 misleading representation of fact.
8

9
10 V. Counter-claimant is informed and believes, and based upon such
11 information and belief, alleges that Counter-defendant's actions also constitute
12 actionable wrongs by failing to reveal material facts, the omission of which tend
13 to mislead or deceive the consumer, and which facts could not reasonably be
14 known by the consumer.
15

16
17 W. By reason of the foregoing unlawful acts, Counter-defendant has
18 caused, and continues to cause, substantial and irreparable damage and injury to
19 Counter-claimant and to the public. Counter-defendant has benefited from such
20 unlawful conduct, and will continue to carry out such unlawful conduct and to
21 be unjustly enriched thereby unless enjoined by this Court.
22

23
24 X. As a proximate and direct result of Counter-defendant's acts as
25 herein alleged, Counter-claimant has sustained damages in an as yet
26 unascertained amount to be proven at trial.
27
28

1 Y. WHEREFORE, Counter-claimant prays for judgment against
2 Counter-defendant as hereinafter set forth.

3 **PRAYER FOR RELIEF**

4
5 WHEREFORE, Counter-claimant prays for judgment against Counter-
6 defendant as follows:

- 7 A. For judgment dismissing the Complaint with prejudice;
8
9 B. Order an award for actual damages according to proof;
10
11 C. Order an award for special damages according to proof;
12
13 D. Order an award granting Counter-claimant monetary relief, including
14 damages and the costs of the action;
15
16 E. Order an award of attorney's fees;
17
18 F. Order an award of punitive damages to be determined at trial;
19
20 G. Order for an injunction prohibiting Counter-defendant from engaging or
21 continuing to engage in the unlawful, unfair, or fraudulent business acts or
22 practices described herein;
23
24 H. Order for treble damages suffered by Counter-claimant as a result of
25 Counter-defendant's unlawful, unfair, or fraudulent business acts or practices
26 described herein;

27 ///

28 ///

1 I. For judgment awarding such other further relief as the Court may deem
2 just and proper under the circumstances in favor of Counter-claimant.
3
4

5 Dated: August 14, 2008

Respectfully Submitted,
THE PATEL LAW FIRM, P.C.

6
7 

8 Nattu J. Patel
9 Attorney for Defendants Sinbad Grand
10 Café, LLC and Tobacco Import USA;
11 and Counter-claimant Sinbad Grand Cafe
12 doing business as Tobacco Import USA
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COUNTER-CLAIMANT'S DEMAND FOR JURY TRIAL

Counter-claimant hereby demands a trial by jury of those issues asserted on the Counterclaim as triable to a jury as a matter of right.

Dated: August 14, 2008

Respectfully Submitted,
THE PATEL LAW FIRM, P.C.



Nattu J. Patel
Attorney for Defendants Sinbad Grand
Café, LLC and Tobacco Import USA;
and Counter-claimant Sinbad Grand Cafe
doing business as Tobacco Import USA

PROOF OF SERVICE
UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CASE NO. CV 07-06104

I, the undersigned, declare as follows:

I am employed in the County of Orange, State of California. I am over the age of 18 years, and not a party to the within action. My business address is: 2532 Dupont Drive, Irvine, California 92612.

On August 14, 2008, I served the following document(s):

Defendants Sinbad Grand Cafe, LLC & Tobacco Import USA's Answer And Affirmative Defenses; Sinbad Grand Café, LLC, Doing Business As Tobacco Import USA's Counterclaim For Unfair Competition

on the interested parties in this action by placing a true and correct copy of each document thereof, enclosed in a sealed envelope, addressed as follows:

Christopher Q. Pham, Esq
Susan Rabin, Esq
GAREEB | PHAM, LLP
707 Wilshire Boulevard, Suite 5300
Los Angeles, CA 90017

- ☒ **By Mail:** I am readily familiar with The Patel Law Firm's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Irvine, California.
- ☐ **By Personal Service:** I provided such document(s) by hand delivery.
- ☐ **By Overnight Courier:** I caused the above-referenced document(s) to be delivered to an overnight courier service for delivery to the above address(es).
- ☐ **By Facsimile Machine:** I caused the above-referenced document(s) to be transmitted to the above-named persons at the following facsimile number(s):
- ☒ **By Electronic Mail:** I caused the above-referenced document(s) to be transmitted to the above-named persons at the following electronic mail address(es):
cpham@gareebpham.com

Executed on August 14, 2008, at Irvine, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction this service was made.


Christina Donos

EXHIBIT D



United States Patent and Trademark Office

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TRADEMARK ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Bassam Hamade	FORMERLY BNN IMPORT EXPORT	02/01/2008	INDIVIDUAL: UNITED STATES
RECEIVING PARTY DATA			
Name:	Al-Fakher for Tobacco Trading & Agencies Co. Ltd.		
Doing Business As:	DBA Sierra Network, Inc.		
Street Address:	P.O. Box 911145		
City:	Amman		
State/Country:	JORDAN		
Postal Code:	11191		
Entity Type:	CORPORATION: JORDAN		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Serial Number:	78703714	AL-FAKHER TROPICAL	
CORRESPONDENCE DATA			
Fax Number:	(213)455-2940		
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:	2134552930		
Email:	srabin@gareebpham.com		
Correspondent Name:	Susan Rabin c/o Gareeb Pham LLP		

Address Line 1: 707 Wilshire Blvd	
Address Line 2: Ste 5300	
Address Line 4: Los Angeles, CALIFORNIA 90017	
ATTORNEY DOCKET NUMBER:	SIERRA
DOMESTIC REPRESENTATIVE	
Name: Susan Rabin c/o Gareeb Pham LLP	
Address Line 1: 707 Wilshire Blvd	
Address Line 2: Ste 5300	
Address Line 4: Los Angeles, CALIFORNIA 90017	
NAME OF SUBMITTER:	Susan Rabin
Signature:	/susan rabin/
Date:	06/27/2008
Total Attachments: 3 source=Settlement-Tobacco Trading#page1.tif source=Settlement-Tobacco Trading#page2.tif source=Settlement-Tobacco Trading#page3.tif	
RECEIPT INFORMATION	
ETAS ID: TM118622	
Receipt Date: 06/27/2008	
Fee Amount: \$40	

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